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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

9 Christopher Schultz,

10 Plaintiff,

11 vs.

12 HomeSmart International, LLC; Natosha
13 Moore; and Eleazar Medrano,

14 Defendants.

CASE NO. 2:24-cv-01694-JJT

**NATOSHA MOORE'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT**

16 Defendant Natosha Moore (“Moore”) submit this Answer and Affirmative
17 Defenses as follows, using the same section designations as present in the Amended
18 Complaint:

19 **INTRODUCTION**

20 1. Defendant states that Paragraph 1 of the Complaint does not state any allegations
21 against Defendant and is a legal conclusion, and therefore no response is required, and to the
22 extent a response is required, Defendant denies the allegation of any violations.

23 2. Denied.

24 3. Denied.

25 4. Denied.

26 5. Denied.

27 6. Denied.

7. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

8. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

JURISDICTION AND VENUE

9. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

10. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

11. Denied insofar as the allegations claims that there was any “wrongful conduct.” The remainder of the allegations of this paragraph state a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

PARTIES

12. Defendant lacks sufficient knowledge or information upon which to form a belief

1 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
2 Plaintiff to his proof.

3 13. Defendant lacks sufficient knowledge or information upon which to form a belief
4 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
5 Plaintiff to his proof.

6 14. Defendant lacks sufficient knowledge or information upon which to form a belief
7 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
8 Plaintiff to his proof.

9 15. Defendant lacks sufficient knowledge or information upon which to form a belief
10 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
11 Plaintiff to his proof.

12 16. Defendant lacks sufficient knowledge or information upon which to form a belief
13 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
14 Plaintiff to his proof.

15 17. Defendant lacks sufficient knowledge or information upon which to form a belief
16 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
17 Plaintiff to his proof.

18 18. Denied insofar as the paragraph alleges that Moore was employed by HomeSmart.

19 19. This paragraph states a legal conclusion, and therefore no response is required,
20 and to the extent a response is required, Defendant lacks sufficient knowledge or information
21 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint
22 and, therefore, leaves Plaintiff to his proof.

23 20. Denied insofar as the paragraph alleges that Medrano was employed by
24 HomeSmart.

21. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

TCPA BACKGROUND

22. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

23. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

24. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

25. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

26. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint

1 and, therefore, leaves Plaintiff to his proof.

2 27. This paragraph states a legal conclusion, and therefore no response is required,
3 and to the extent a response is required, Defendant lacks sufficient knowledge or information
4 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint
5 and, therefore, leaves Plaintiff to his proof.

6 28. This paragraph states a legal conclusion, and therefore no response is required,
7 and to the extent a response is required, Defendant lacks sufficient knowledge or information
8 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint
9 and, therefore, leaves Plaintiff to his proof.

10 29. This paragraph states a legal conclusion, and therefore no response is required,
11 and to the extent a response is required, Defendant lacks sufficient knowledge or information
12 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint
13 and, therefore, leaves Plaintiff to his proof.

14 30. This paragraph states a legal conclusion, and therefore no response is required,
15 and to the extent a response is required, Defendant lacks sufficient knowledge or information
16 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint
17 and, therefore, leaves Plaintiff to his proof.

18 31. This paragraph states a legal conclusion, and therefore no response is required,
19 and to the extent a response is required, Defendant lacks sufficient knowledge or information
20 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint
21 and, therefore, leaves Plaintiff to his proof.

22 32. This paragraph states a legal conclusion, and therefore no response is required,
23 and to the extent a response is required, Defendant lacks sufficient knowledge or information
24 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint

and, therefore, leaves Plaintiff to his proof.

33. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

34. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

35. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

36. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

HOMESMART BACKGROUND

37. Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

38. Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

1 39. Defendant lacks sufficient knowledge or information upon which to form a belief
2 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
3 Plaintiff to his proof.

4 40. Defendant lacks sufficient knowledge or information upon which to form a belief
5 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
6 Plaintiff to his proof.

7 41. Defendant lacks sufficient knowledge or information upon which to form a belief
8 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
9 Plaintiff to his proof.

10 42. Defendant lacks sufficient knowledge or information upon which to form a belief
11 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
12 Plaintiff to his proof.

13 43. Defendant lacks sufficient knowledge or information upon which to form a belief
14 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
15 Plaintiff to his proof.

16 44. Defendant lacks sufficient knowledge or information upon which to form a belief
17 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
18 Plaintiff to his proof.

19 45. Defendant lacks sufficient knowledge or information upon which to form a belief
20 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
21 Plaintiff to his proof.

22 46. Defendant lacks sufficient knowledge or information upon which to form a belief
23 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
24 Plaintiff to his proof.

1 47. Defendant lacks sufficient knowledge or information upon which to form a belief
2 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
3 Plaintiff to his proof.

4 48. Defendant lacks sufficient knowledge or information upon which to form a belief
5 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
6 Plaintiff to his proof.

7 49. Defendant lacks sufficient knowledge or information upon which to form a belief
8 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
9 Plaintiff to his proof.

10 50. Defendant lacks sufficient knowledge or information upon which to form a belief
11 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
12 Plaintiff to his proof.

PLAINTIFF'S FACTUAL ALLEGATIONS

13 51. Defendant lacks sufficient knowledge or information upon which to form a belief
14 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
15 Plaintiff to his proof.

16 52. Defendant lacks sufficient knowledge or information upon which to form a belief
17 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
18 Plaintiff to his proof.

19 53. Defendant lacks sufficient knowledge or information upon which to form a belief
20 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
21 Plaintiff to his proof.

22 54. Defendant lacks sufficient knowledge or information upon which to form a belief
23 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
24 Plaintiff to his proof.

1 Plaintiff to his proof.

2 55. Defendant lacks sufficient knowledge or information upon which to form a belief
3 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves

4 Plaintiff to his proof.

5 56. Defendant lacks sufficient knowledge or information upon which to form a belief
6 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves

7 Plaintiff to his proof.

8 57. Defendant lacks sufficient knowledge or information upon which to form a belief
9 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves

10 Plaintiff to his proof.

11 58. Defendant lacks sufficient knowledge or information upon which to form a belief
12 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves

13 Plaintiff to his proof.

14 59. Defendant lacks sufficient knowledge or information upon which to form a belief
15 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves

16 Plaintiff to his proof.

17 60. Defendant lacks sufficient knowledge or information upon which to form a belief
18 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves

19 Plaintiff to his proof.

20 61. Defendant lacks sufficient knowledge or information upon which to form a belief
21 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves

22 Plaintiff to his proof.

23 62. Defendant lacks sufficient knowledge or information upon which to form a belief
24 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves

25 Plaintiff to his proof.

26 Plaintiff to his proof.

27 Plaintiff to his proof.

28 Plaintiff to his proof.

1 Plaintiff to his proof.

2 63. Defendant lacks sufficient knowledge or information upon which to form a belief
3 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves

4 Plaintiff to his proof.

5 64. Defendant denies sending the text in question.

6 65. Defendant lacks sufficient knowledge or information upon which to form a belief
7 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
8 Plaintiff to his proof.

9 66. Defendant denies sending the text in question.

10 67. Defendant lacks sufficient knowledge or information upon which to form a belief
11 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
12 Plaintiff to his proof.

13 68. Defendant denies sending the texts in question.

14 69. Defendant lacks sufficient knowledge or information upon which to form a belief
15 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
16 Plaintiff to his proof.

17 70. Defendant denies sending any automated or bulk messages.

18 71. Defendant lacks sufficient knowledge or information upon which to form a belief
19 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
20 Plaintiff to his proof.

21 72. Defendant lacks sufficient knowledge or information upon which to form a belief
22 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
23 Plaintiff to his proof.

24 73. Defendant lacks sufficient knowledge or information upon which to form a belief

1 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
2 Plaintiff to his proof.

7 75. Defendant lacks sufficient knowledge or information upon which to form a belief
8 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
9 Plaintiff to his proof.

10 76. Defendant lacks sufficient knowledge or information upon which to form a belief
11 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves
12 Plaintiff to his proof.

14 77. Denied.

15 78. Denied.

16 79. Denied.

DEFENDANTS' LIABILITY

18 80. Denied.

81. Denied.

82 Denied

22 83 Denied

23 84 Denied

CLASS ACTION ALLEGATIONS

25 85. Defendant admit that Plaintiff purports to bring a class and denies that any class
26 exists.

86. This paragraph states a legal conclusion, and therefore no response is required.

1 and to the extent a response is required, Defendant lacks sufficient knowledge or information
2 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint
3 and, therefore, leaves Plaintiff to his proof.

4 87. Denied.

5 88. Denied.

6 89. Denied.

7 90. Denied.

8 91. Denied.

9 92. Denied.

10 93. Denied.

11 94. Defendant denies that any class exists, as to the remainder Defendant lacks
12 sufficient knowledge or information upon which to form a belief as to the truth of the
13 allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

14 95. Defendant denies that any class exists, as to the remainder Defendant lacks
15 sufficient knowledge or information upon which to form a belief as to the truth of the
16 allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

17 96. Denied.

18 97. Denied.

19 98. This paragraph states a legal conclusion, and therefore no response is required,
20 and to the extent a response is required, Defendant lacks sufficient knowledge or information
21 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint
22 and, therefore, leaves Plaintiff to his proof.

23 99. Denied.

24 100. There are no allegations between 100-110.

111. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

112. This paragraph states a legal conclusion, and therefore no response is required, and to the extent a response is required, Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

113. Denied.

114. Denied.

115. Denied.

116 Denied

117 Denied

118 Denied

[PLAINTIFF'S] PRAYER FOR RELIEF

Defendant denies all wrongdoing and liability, denies that this lawsuit is appropriate for class certification, and thus denies that Plaintiff is entitled to any relief, including the relief sought in his Complaint.

AFFIRMATIVE DEFENSES

By alleging the defenses herein, Defendant intends no alteration of any burden of proof that otherwise exists with regard to the claims in the Complaint. All defenses are pled in the alternative and do not constitute an admission either of liability or as to whether Plaintiff is entitled to any relief, which is denied. Defendant reserves the right to amend,

modify and/or supplement these Affirmative Defenses.

First Affirmative Defense

Plaintiff and/or putative class members lacks standing to assert the claim asserted in the Complaint because Plaintiff has not been harmed or suffered “injury in fact” by the alleged conduct at issue regardless of whether Plaintiff and/or the putative class members seek only statutory damages. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). It would appear self-evident that the recipient of a cell phone call would first be required to demonstrate cognizable injury; that is, that he was both (1) charged, and (2) paid, for the call. See 47 U.S.C. §227(b)(1)(A)(iii).

Second Affirmative Defense

Defendant has established and implemented, with due care, reasonable practices, training, and procedures to effectively prevent telephone solicitations and/or calls in violation of the TCPA and/or in violation of the regulations prescribed under the TCPA.

Third Affirmative Defense

Plaintiff's and/or putative class members' claims are barred in whole or in part by the applicable statutes of limitations.

Fourth Affirmative Defense

Plaintiff's and/or putative class members' claims are barred by the doctrine of unclean hands and are estopped from claiming any damages, or have otherwise waived any such claims or damages, to the extent Plaintiff and/or putative class members have attempted to induce Defendant to violate the TCPA by specifically requesting that Defendant contact Plaintiff and/or putative class members, and therefore assisted,

1 directed, ordered, approved and/or ratified Defendant's conduct by specifically requesting
2 that Defendant contact Plaintiff and/or putative class members and Defendant relied on
3 Plaintiff's and/or putative class members' actions to its detriment.
4

5 **Fifth Affirmative Defense**

6 Plaintiff's and putative class members' claims are barred, in whole or in part,
7 because at all times Plaintiff and/or putative class members provided, invited or gave
8 express or implied consent, invitation, or permission to Defendant's conduct as described
9 in the Complaint. The Complaint and each cause of action contained therein are barred
10 as a matter of law.

12 **Sixth Affirmative Defense**

13 Plaintiff and/or putative class members, by their own actions and conduct, have
14 failed to exercise reasonable care and diligence on their own behalf, thereby causing or
15 contributing to their alleged injury and damages, if any. Plaintiff's and/or putative class
16 members' recovery therefore must be reduced or eliminated altogether by the proportion
17 of damages caused by their own acts and conduct.
18

20 **Seventh Affirmative Defense**

21 Plaintiff and/or the putative class members have failed to name all necessary and
22 indispensable parties to this action.
23

24 **Eighth Affirmative Defense**

25 No act or omission of Defendant was a substantial factor in bringing about the
26 damages alleged, nor was any act or omission of Defendant a contributing cause thereof.
27 Any alleged acts or omissions of Defendant were superseded by the acts or omissions of
28

1 others, including Plaintiff and/or the putative class members, or other third parties named
2 or not named as in the Complaint, which were the independent, intervening and proximate
3 cause of the damage or loss allegedly sustained by Plaintiff and/or putative class members.
4 Plaintiff's and/or putative class members' claims are barred, in whole or in part, because
5 Plaintiff's and/or putative class members' injuries, if any, were caused and/or contributed
6 to, in whole or in part, by the actions of parties other than Defendant or for whom
7 Defendant has no control and/or who may have called Plaintiff and/or putative class
8 members identifying Defendant's services, goods or products without Defendant's
9 consent or knowledge.

12 **Ninth Affirmative Defense**

13 Rights and causes of action arising under the TCPA are not assignable. Any
14 proposed or putative assignment of such rights and causes of action to Plaintiff and/or
15 putative class members are therefore invalid, and Plaintiff and/or putative class members
16 lacks standing to sue or recover thereon.

18 **Tenth Affirmative Defense**

19 Violations of the technical requirements of the TCPA are not enforceable by
20 private litigants, and Plaintiff and/or putative class members lacks standing to sue or
21 recover based thereon.

23 **Eleventh Affirmative Defense**

25 Where, as here, the parties had an "established business relationship," the TCPA's
26 prohibitions do not apply, and Defendant's action cannot – as a matter of law – violate the
27 TCPA. 47 C.F.R. § 64.1200(a)(2)(iv).

Twelfth Affirmative Defense

Plaintiff's and/or putative class members' claims against Defendant are barred, in whole or in part, by the TCPA's "safe harbor provision," as provided for by 47 C.F.R. § 64.1200(c)(2).

Thirteenth Affirmative Defense

Plaintiff and putative class members cannot hold Defendant liable for alleged violations of the TCPA for the alleged conduct of a third party, as Defendant is not vicariously liable for such conduct. Any damage, loss, or liability sustained by Plaintiff and/or putative class members must be reduced, diminished, and/or barred in proportion to the wrongful conduct or negligent conduct of persons or entities other than Defendant, including third parties, under the principles of equitable allocation, recoupment, set-off, proportionate responsibility, and/or comparative/contributory fault.

Fourteenth Affirmative Defense

To the extent Defendant violated the law – which it denies – any such violations were neither intentional nor willful, and were due to bona fide errors despite procedures and/or policies designed to prevent such errors.

Fifteenth Affirmative Defense

Plaintiff and/or putative class members lacks standing to bring a claim on behalf of any putative class members outside the specific calling campaign that he claims to be a part of, and lacks standing to bring a claim on behalf of any putative class members outside the Commonwealth of Massachusetts.

111

Sixteenth Affirmative Defense

Plaintiff's and putative class members' claims are barred to the extent Plaintiff and/or putative class members were not charged for the call(s) at issue pursuant to 47 U.S.C. § 227(b)(1)(A)(iii).

Seventeenth Affirmative Defense

The claims asserted in the Complaint are barred because Defendant has established and implemented, with due care, reasonable practices, policies and/or procedures designed to prevent violations of the TCPA.

Eighteenth Affirmative Defense

To the extent the TCPA is applied against Defendant in this case to impose liability that would be grossly disproportional to any actual harm allegedly caused by the activity in question, the TCPA violates the Due Process Clause of the Fifth Amendment to the United States Constitution, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the Eighth Amendment to the United States Constitution, which prohibits excessive fines.

Nineteenth Affirmative Defense

Plaintiff's and putative class members' claims are barred to the extent they are subject to any agreement prohibiting such claims, including agreements containing a class action waiver or otherwise requiring arbitration of the claims.

Twentieth Affirmative Defense

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

Twenty-First Affirmative Defense

Plaintiff's and/or putative class members' claims are barred, in whole or in part, by the doctrine of *de minimis* harm because the actual harm allegedly suffered by Plaintiff and/or putative class members is negligible.

Twenty-Second Affirmative Defense

Plaintiff's and/or putative class members' claims are barred, in whole or in part, because the TCPA violates the First Amendment to the U.S. Constitution, on its face and as applied, as an overly broad prohibition on free speech.

Twenty-Third Affirmative Defense

Plaintiff and/or the putative class members cannot carry their burden of showing that any action of Defendant was willful or knowing. Moreover, Plaintiff and/or putative class members are not entitled to treble damages because Defendant did not act willfully or knowingly.

Twenty-Fourth Affirmative Defense

The Complaint, and each claim asserted therein, is barred, in whole or in part, because Plaintiff and/or putative class members are not within the “zone of interests” of persons and entities that the TCPA was created to affect.

Twenty-Fifth Affirmative Defense

At all times relevant to the matters alleged in the Complaint, Defendant acted in good faith, reasonably and without any actual or constructive knowledge of any alleged breach of any legal duty owed to Plaintiff, or any other alleged wrong done to Plaintiff and/or putative class members. The acts and conduct of Defendant were fair and

1 reasonable and were performed in good faith based on all the relevant facts known to
2 Defendant. Defendant acted with a good faith cause and/or a legitimate business reason
3 to act as it did and did not directly or indirectly perform any acts that would constitute a
4 violation of Plaintiff's and/or putative class members' rights. Consequently, Plaintiff and
5 putative class members are not entitled to any damages whatsoever.

7 **Twenty-Sixth Affirmative Defense**

8
9 Defendant denies that class treatment is warranted and/or satisfied Fed. R. Civ. P.
10 23, and further incorporates each of the foregoing Affirmative Defenses to any other
11 putative class members, which would require a burdensome and time consuming,
12 individualized inquiry for each such plaintiff.

13 **Reservation of Rights to Allege Other Affirmative Defenses**

14
15 Defendant is entitled to the benefit of all defenses and presumptions contained in,
16 or arising from, any rule of law or statute governing the claims asserted in this action.
17 Moreover, certain additional defenses to the Complaint and to the asserted claims for relief
18 stated therein may be available to Defendant. These additional defenses may require
19 discovery before than be properly alleged. Defendant intends to rely on any other defenses
20 that may become available or apparent during the course of discovery or its investigation
21 of Plaintiff's and/or putative class members' claims and thus reserves its right to amend
22 its Answer and Affirmative Defenses to include such defenses to Plaintiff's and/or
23 putative class members' claims.

24 **PRAAYER FOR RELIEF**

25
26 WHEREFORE, Defendant prays for judgment against Plaintiff as follows:
27
28

1. That Plaintiff take nothing by virtue of his Complaint;
2. That Plaintiff's Complaint be dismissed with prejudice;
3. That judgement enter in favor of Defendant;
4. For costs and disbursements incurred herein, including attorneys' fees and costs; and
5. For such other relief as the Court may deem appropriate.

9
REQUEST FOR JURY TRIAL

10 Defendant demands a jury trial on all issues so triable.

11
12 Dated this 14th day of October, 2024.

13
14 **GORDON REES SCULLY
MANSUKHANI, LLP**

15 By: /s/ Lori N. Brown
16 Lori N. Brown
17 Attorney for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2024, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing thereby transmitting a notice of electronic filing to all counsel and parties of record.

/s/ Jessica C. Gerblick